91-557 (1)

Supreme Court, U.S.
FILED
SEP 30 1991
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

NO._____

ARTHUR FALKNER and SYBLE FALKNER, his wife,

PETITIONERS, PRO SE,

-vs-

AMERIFIRST BANK, a Federal Savings Bank, Etc.; and BLACKWELL, WALKER, FASCELL & HOEHL, ESQS., Etc.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals can AFFIRM a District Court's Rule 12(b)(6) Order Granting Motion To Dismiss based upon facts not set out in the complaint, without notice and hearing?

2. Whether the Court of Appeals can refuse to take the allegations of THE FALKNERS' joint pro se verified complaint as "true" in AFFIRMING a Rule 12(b)(6) Order Granting Motion To Dismiss, or is the truth relevant?

3. Whether the Court of Appeals can AFFIRM a District Court's Rule 12(b)(6) Order Granting Motion To Dismiss by failing to construe the pro se complaint liberally in favor of THE FALKNERS?

4. Whether the Court of Appeals can AFFIRM a District Court's Rule 12(b)(6) Order Granting Motion To Dismiss that denied THE FALKNERS' their rights to test the legal sufficiency of the defense raised by THE THRIFT and THE LAWYERS and

to strike it as "sham" under Rules 11, 12(f) and 56, Fed.R.Civ.P.?

5. Whether the Court of Appeals erred and abused its powers and authority when it neglected to review that portion of the Order of Dismissal appealed that DENIED as "moot" THE FALKNERS' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11?

6. Whether the Federal Courts have the power to give relief from a state court restitution judgment obtained by fraud?

7. Whether any court can utilize a "void" judgment to sustain it's rulings?

8. Whether the Court of Appeals erred and abused its power and authority in failing to direct the errors and omissions corrected in the record to conform to the truth?

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CERTIFICATE OF INTERESTED PERSONS

ARTHUR FALKNER and SYBLE FALKNER, his wife, CERTIFY that the following persons listed have an interest in the outcome of this case:

1. ARTHUR FALKNER and SYBLE FALKNER, Plaintiffs/Appellants/Petitioners, Pro se; (THE FALKNERS);

2. AMERIFIRST BANK, f/k/a AMERIFIRST FEDERAL SAVINGS & LOAN ASSOC, f/k/a FIRST FEDERAL SAVINGS & LOAN ASSOC. OF MIAMI, Defendant/ Appellee/Respondent; (THE THRIFT);

3. BLACKWELL, WALKER, FASCELL & HOEHL, ESQS, f/k/a BLACKWELL, WALKER, GRAY POWERS, FLICK & HOEHL, ESQS., Defendant/Appellee/Respondent; (THE LAWYERS);

4. Blackwell, Walker, P.A. by Daniel J. Kissane, Esq. Attorney for THE THRIFT, its Receiver "RTC" and THE LAWYERS:

4. Resolution Trust Corp., Receiver for THE THRIFT, effective 3-15-91;

5. Honorable James W. Kehoe, U.S. District Court Judge, Southern District of Florida, Miami Div. (JUDGE BELOW APPEALED).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

NO._____

USCA-11 NO. 90-5302

ARTHUR FALKNER and SYBLE FALKNER, his wife,

PETITIONERS, PRO SE,

-vs-

AMERIFIRST BANK, a Federal Savings Bank, Etc.; and BLACKWELL, WALKER, FASCELL & HOEHL, ESQS., Etc.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioners, pro se ARTHUR FALKNER and SYBLE FALKNER, his wife, respectfully pray for a Writ of Certiorari issue to review the Opinion and the Judgment of the United States Court of Appeals for the Eleventh Circuit entered on May 10, 1991.

OPINIONS BELOW

The Court of Appeals entered its Rule 34-3 Opinion (Appendix A, infra, pp. 43-45) and Judgment (Appendix B, infra, pp. 46) both unpublished and dated May 10, 1991, under its Case No. 90-5302 that AFFIRMED the Rule 12(b)(6) Order of Dismissal of the U.S. District Court for the Southern District of Florida dated February 27, 1990, that "after a review" of the motion," DISMISSED the complaint and DENIED as "MOOT" plaintiffs' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11 (Appendix D, infra, pp. 48-49). The Opinion changed the facts and applied the wrong rule of law, "that the defendants, along with state officials acting under color of state law, conspired through judicial foreclosure proceedings (1) to take their property away in

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(1) Instant case collaterally attacks a judicial RESTITUTION action & judgment.

violation of the Fifth, Seventh and Fourteenth Amendments," and did not consider the DENIAL of plaintiffs' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11. The Petition For Rehearing was denied July 3, 1991 (Appendix C, infra, pp.47).

JURISDICTION

The Opinion and Judgment of the Court of Appeals, Eleventh Circuit, was entered May 10, 1991 (Appendix A & B, infra, pp. 43-46). The Petition For Rehearing was denied July 3, 1991 (Appendix C, infra, pp.47). This Petition For Certiorari was filed less than 90 days from the date of the denial of the Petition For Rehearing. The jurisdiction of this Court is invoked under 28 United States Code, Section 1254(1).

STATUTORY AND RULE PROVISIONS INVOLVED

Rule 8(f), Fed.R.Civ.P.:

> All pleadings shall be so construed as to do subsaantial justice.

Rule 11, Fed.R.Civ.P:

> . . If a pleading is . . signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served, Etc.

Rule 12(b), Fed.R.Civ.P:

> . . If, on motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12(f), Fed.R.Civ.P:

> . . upon motion made by a party within 20 days after the service from any pleading upon him . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Rule 56 (a), Fed.R.Civ.P:

> A party seeking to recover upon a claim . . or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action . . move with . . supporting affidavits for a summary

judgment in his favor upon all or part thereof.

Rule 56(c), Fed.R.Civ.P:

> . . The judgment sought shall be rendered forthwith if the pleadings . . together with the affidavits. . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, etc.

Rule 56(e), Fed.R.Civ.P.:

> . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits, or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 60(a), Fed.R.Civ.P.:

> Clerical mistakes in . . parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time . . on the motion of any party . . During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may bo so corrected with leave of the appellate court.

Rule 79(a), Fed.R.Civ.P.:

> CIVIL DOCKET These entries . . shall show the substance of each order or judgment of the court .. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

Rule 10(e), Fed.R.App.P.:

> If any differences arises as to whether the record truly discloses what occured in the district court, the differences shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein .. the district court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion .. may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted.

Rule 36-1, Local Rules, C.A.-11, I.O.P.

> ..All non-published opinions and affirmances without opinion under 11th Cir.R. 36-1 are printed in table form in the Federal Reporter.

Fifth Amendment, U.S. Constitution:

> No person..shall be deprived of life, liberty or property.. without due process of law..

Seventh Amendment, U.S. Constitution:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..

Fourteenth Amendment, U.S. Constitution:

> No state shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.

28 USCS § 1343(a)(3)

> The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> To redress the deprivation, under color of any State law, st-tute, ordinance, regulation, custome or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for the protection of civil rights..

28 USCS § 1331:

> The district court shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

42 USCS § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State.. subjects, or causes to be subjected, any citizen of the United States..

> within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURTS BELOW

ARTHUR FALKNER and SYBLE FALKNER, his wife, petitioners, pro se, plaintiffs/appellants, pro se, below (THE FALKNERS), on October 12, 1989, under Case No. 89-2292-CIV-KEHOE, filed their joint verified civil rights complaint under Sections 1983, etc., against defendants/appellees AMERI-FIRST BANK, a/k/a AMERIFIRST FEDERAL SAVINGS & LOAN ASSOC, a/k/a FIRST FEDERAL SAVINGS & LOAN ASSOC OF MIAMI (THE THRIFT); and BLACKWELL, WALKER, FASCELL & HOEHL, ESQS, a/k/a BLACKWELL, WALKER, GRAY, POWERS, FLICK & HOEHL, ESQS (THE LAWYERS), claiming that THE THRIFT and THE LAWYERS, along with state officials acting under color of state law conspired through judicial RESTITUTION

proceedings collaterally attacked for non-compliance with constitutional due process and statutory requirements that suppressed evidence and denied THE FALKNERS' their rights to present their case and avail themselves of their legal rights and remedies or to otherwise make an effective claim or defense relating to THE FALKNERS' liberty and property rights, or to have a jury trial as ordered, or to have a fair and impartial appeal sought on a true and correct record, and relied upon "void" and "reversed" judgments to sustain its 1988. Summary Judgment for THE THRIFT, in violation of the 5th, 7th and 14 Amendments, U.S.Constitution.

On November 2, 1989, defendants mailed its joint 12(b)(1)(6)(7) and Rule 11 Motion To Dismiss or Strike, with affirmative defenses of res judicata and statute of limitations, which was in essence an answer and general denial, with memorandum claiming THE FALKNERS' recitation facts, in

most instances, "simply unbelievable," and fraudently changed the facts that appeared in the complaint.

On November 15, 1989, THE FALKNERS' mailed their Rule 12(f), 56 Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11, with supporting affidavit, exhibits and memorandum of law, clearly showing defendants' Motion To Dismiss or Strike was in fact a sham "answer" interposed in bad faith for delay and unworthy motive and that THE FALKNERS' were entitled to Summary Judgment in their favor as a matter of right and law, and requested an evidentiary hearing and oral argument thereon (1), and timely filed Notice of Pendency thereon, and on February 14, 1990, mailed their Notice of 90 Day Expiration on said motion and Request To Set Hearing.

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(1) Defendants' did not respond as required under Rule 56(e), Fed.R.Civ.P.

After 120 days elapsed with no scheduling order issued, on February 20, 1990, THE FALKNERS' mailed their Petition for Writ of Mandamus to the Court of Appeals, 11th Circuit, entitled, ."IN RE: ARTHUR FALKNER & SYBLE FALKNER, h/w, petitioners, and were assigned Case No. 90-5184, to compel Judge Kehoe, USDJ, to proceed and deal with the preliminary matters before him, mandated under Rule 16(b), and to consider, hear and grant THE FALKNERS' unopposed Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11.

The district court refused to take the allegations of THE FALKNERS' pro se complaint as "true" or to construe the complaint liberally in favor of THE FALKNERS and ignored its mandatory duty to determine the motion to dismiss upon the facts set out in the complaint and on February 27, 1990, to circumvent the mandamus proceeding, entered its Rule

12(b)(6) order of dismissal (Appendix D, infra, pp. 48-49) that granted the defendants' motion to dismiss, but was based on facts developed outside the complaint by THE LAWYERS, without required notice and hearing, and didn't state alleged deficiences or a chance to amend, and FURTHER, by its note 1 thereon, ruled: "In view of the Court's ruling herein, the Plaintiffs' Motion To Strike Sham Defense; And For Summary Judgment, etc. is DENIED as MOOT."

On March 9, 1990, the Court of Appeals left the record and entered its unprinted Rule 36-1 affirmance without opinion stating: "The Petition for writ of mandamus is DISMISSED as moot in light of the district court's ruling of February 27, 1990, dismissing plaintiffs' complaint. See note 1 of the district court's order (Appendix E, infra., pp.50), which order was not before it under 28 USC § 1651(1) and not dependent on 28 USC § 1291.

THE FALKNERS' timely appealed the district court's final dismissal order (Appendix D, infra, pp. 48-49) and were assigned Case No. 90-5302 thereon, and timely filed their brief with record excerpts that consisted of the entire record of the court below, on June 4, 1990.

On June 13, 1990, under mandamus case No. 90-5184, the Court of Appeals denied rehearing, etc (Appendix F, infra, pp. 51), and on the same date under Appeal Case No. 90-5302, Judge Roney, USCJ, denied THE FALKNERS' motion to supplement and correct the record, etc, and gave THE FALKNERS' a 30 day extension to file their brief that was lodged in his court a week.

THE THRIFT and THE LAWYERS, on July 6, 1990, filed their "Answer Brief of Appellee Bank and Blackwell & Walker, P.A." which THE FALKNERS' moved to strike, as changing the facts, issues and law of the case.

On July 26, 1990, Judge Anderson,

USCJ, entered his order denying reconsideration by the court of Judge Roneys' 6-13-90 order (Appendix H, infra., pp. 54-55), and on August 14, 1990, Judge Fay, USDJ, denied THE FALKNERS' motions to strike answer brief and reconsideration by the court of Judge Anderson's 7-26-90 order and gave a 14 day extension to file a reply brief, not requested or wanted by THE FALKNERS.

On August 22, 1990, Judge Kehoe, USDJ, totally ignored his responsibility under Rule 10(e), Fed.R.Civ.P., and the clerk's duties under Rule 79(a), Fed.R.Civ. P., to make and keep a true and correct record as to the defendants sued, the nature of the action and to show the omitted substance of the 2-27-90 order of dismissal appealed that DENIED as MOOT THE FALKNERS' Motion To Strike Sham Defense; And For Summary Judgment, Etc., and to enter jury on the folio, and greatly prejudiced THE FALKNERS' by his August 22, 1990 Order Denying Motion To Compel Clerk To

Comply with Rule 11, Fed.R.App.P., and further refused to cause THE FALKNERS' to be supplied with the district court docket sheet, indexed for the appeal, or a list of the documents co-respondly numbered and identified with reasonable definiteness.

On September 6, 1990, THE FALKNERS' timely filed in this court, their joint petition for writ of certiorari to the Court of Appeals, Eleventh Circuit, under Case No. 90-475 herein on the 3-9-90 order denying mandamus as moot under Case No. 90-5184 (Appendix E, infra., pp. 50). This court, on November 5, 1990, denied a petition against the U.S. District Court for the Southern District of Florida, 90-475, (111 Sup. Ct. Reports 388), and on January 7, 1990, denied THE FALKNERS' joint petition for rehearing thereon (111 Sup. Ct. Reports 716), using the same incorrect title and directing both orders to ARTHUR FALKNER, solely (Appendix K, infra, pp. 59).

On May 10, 1991, a panel of Circuit Judges KRAVITCH, JOHNSON and DUBINA, entered three seperate orders, one that denied THE FALKNERS' motion and supplemental emergency motion for reconsideration, etc of the 8-14- and 6-13 Orders (Appendix L, infra, pp. 60). The second was a Judgment AFFIRMING the order of dismissal (Appendix B, infra, pp. 46), and the third was an Opinion on the AFFIRMANCE (Appendix A, infra, pp. 43-45) that left the four corners of the complaint and changed its facts that the conspiracy under color of state law envolved a judicial foreclosure proceeding and not a judicial restitution proceeding and judgment; limited the appeal to the Rule 12(b)(6) portion of the 2-27-89 Order of Dismissal appealed; ignored the other portion of the Order of Dismissal appealed that denied THE FALKNERS Motion to Strike Sham Defense; And For Summary Judgment, Etc; and by its footnote 1,

granted the motion of Resolution Trust Corp. to be substituded as appellee for defendant Amerifirst Bank; and denied all outstanding motions by THE FALKNERS' for reconsideration by the court of the orders of 7-26-90, and 8-14-90 of Judges Anderson and Fay, respectively, and denied inspection of page to of it's docket sheet in this case and to correct the docket. The court below ignored THE FALKNERS' outstanding, unopposed request for panel review of Judge Roney's 6-13-90 order.

STATEMENT OF THE FACTS

The "facts" of THE FALKNERS' pro se verified complaint aver that they took title to real property and paid THE THRIFT'S mortgage debt thereon (then First Fed. S & L Assoc of Miami), via a valid final "Judgment For Specific Performance & Damages: dated January 13, 1969 (Falkner v Pastrano, Fla. 11th Jud. Circuit, Case No. 69-17214, recorded in O.R. Book 1119, pp. 260-261, (Exhibit A of the Complaint) and that THE

THRIFT, as mortgagor/third party beneficiary named therein, after accepting over $35,000.00 from THE FALKNERS' for 12-1/2 years, through May, 1981, claimed it invalid and fraudulently forclosed on THE FALKNERS' property, when they were not in default and without SYBLE FALKNER as a party, against a stranger and creditors who had no interest in the property, in total disregard and in interference with THE FALKNERS' known liberty, due process and property rights (AmeriFirst Fed. S & L Assoc. v Wasserman, Fla. 11th Jud. Circuit, Case No. 81-1614-CA-16), and in total violation and contempt of USDJ Roetiger's February 13, 1975 Order of Dismissal in THE FALKNERS' Quiet Title Action (Falkner v. U.S., Etc. No. 74-1261-CIV-NCR), that determined that the 69-17214 specific performance case "had exclusive jurisdiction" to determine finally as between all the parties and the world, all conflicting claims to the property in question (1).

THE FALKNERS' commenced a state court restitution action against THE THRIFT (Falkner v AmeriFirst Fed. S & L Assoc, Fla. 11th Jud. Circuit, Case No. 83-8117 (CA-28) recommended by THE LAWYERS and the Federal Court's April 27, 1982 dismissal order (Falkner v AmeriFirst Fed. S & L Assoc, USDC-So-FL, No. 82-0113-CIV-SMA-CA) and affirmed on that basis on February 22, 1983 (701 F.2d 188) wherein they timely attacked THE THRIFTS' said foreclosure judgment dated September 3, 1981, against THE FALKNERS' property as "void" based on lack of jurisdiction and fraud and unconstitutional acts of the defendants' in its attainment where they made it appear that the foreclosure action had jurisdiction of the property and the parties when in reality they knew very well that

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(1) This Court declined to consider the federal issues of estoppel raised by THE FALKNERs' in the '69 Specific Performance case (Falkner v Pastrano, No. 71-1478, 93 Sup Ct 459, 409 U.S. 1020, 24 L.Ed.2d 312).

that court had no jurisdiction and that it was vested "exclusively" in the '69 case, in which THE THRIFT was a party, represented by THE LAWYERS, in both cases.

THE THRIFT with THE LAWYERS, in collusion with state court judges and clerk's of that court, under color of state law, and with illegal intent and motive to obstruct justice and deny THE FALKNERS' their known liberty, due process and property rights, and in willful contempt of Judge Roetiger's 2-13-75 order, manipulated and ignored relevant state law and stalled the required jury trial for six (6) years by entering several erroneous orders in the trial and appellate court (467 So.2d 746, Fla 3d DCA-4-2-85 and 489 So.2d 758, Fla 3d DCA 4-1-86), and wilfully stiffled and suppressed evidence presented to it that proved the foreclosure proceedings and judgment "void" on its face and that THE FALKNERS' were entitled to summary judgment in their favor

as a matter of right and law, resulting in state court judge Fuller's order granting THE THRIFT summary judgment on April 22, 1988, as a trespasser, without sufficient notice, that changed the facts and invaded the province of a jury, and relied on the "void" foreclosure judgment, known by it to be "void" as a valid defense and sustained the fraud of THE THRIFT and THE LAWYERS.

When the state appellate court refused to enforce its order directing the clerk below to correct the record and directed THE FALKNERS' to file their brief on a false and incorrect record known by them to be false and untrue, and as the circumstances made THE FALKNERS' appeal ineffective or a less effective remedy than that sought in this instant suit, on March 14, 1989, THE FALKNERS' voluntarily dismissed the appeal from the Order Granting THE THRIFT summary judgment, which the Appellate Court recognized and affirmed by its

order of dismissal dated March 28, 1989, and collaterally attacked the restitution proceedings and judgment in this instant civil rights case on October 12, 1989.

The court of appeals, as the district court below, refused to take the allegations of THE FALKNERS' pro se complaint as "true" or to construe the complaint liberally in favor of THE FALKNERS' and actually left the record to arrive at its erroneous AFFIRMANCE that was based upon a false fact that "The Falkners' claim that the defendants, along with state officials acting under color of state law, conspired through judicial foreclosure proceedings to take their property away in violation of the Fifth, Seventh, and Fourteenth Amendments," and ignores its mandatory duty to determine the motion to dismiss upon the facts set out in the complaint that the conspiracy was through judicial restitutions proceedings and judgment, and to treat it as a motion for summary judgment when it left

the complaint facts, and its sufficiency was challenged by THE FALKNERS' Rule 11, 12(f) and 56 motions.

The fact that the court of appeals refuses to "print" its non-published opinions and affirmances without opinion under 11th Cir. R. 36-1 in this case, as required, and that it has deemed portions of its progress docket sheets SECRET to THE FALKNERS, and has ignored the record and record excerpts and heard the cause "on the transcript of record," (Appendix B, infra, pp. 46), compounded by the fact that the courts below refused to correct the original record on appeal and to cause that portion of the dismissal order appealed that DENIED THE FALKNERS' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11, as MOOT,"to have adequate notation in the civil docket" and entered pursuant to Rule 79(a), Fed.R.Civ.P., as mandated, denied THE FALKNERS' their

fundamental rights to test the legal sufficiency of the defense of THE THRIFT and THE LAWYERS and to be heard on every question raised involving their rights and interests and acts to obstruct justice and denies THE FALKNERS' their guaranteed rights to due process and appeal thereon.

The record and record excerpts reflect that the defense of THE THRIFT and THE LAWYERS is in fact a "sham" "Answer" that lacks sufficient evidentiary support for their factual contentions to raise a boni fide issue; the case is at issue; and THE FALKNERS' are entitled to due process and summary judgment in their favor, pursuant to Rules 8(a)(f), 12(f), 11, and 56, Fed.R.Civ.P., and the U.S. Constitution.

The courts below, in considering only what THE LAWYERS, who represent themselves, and THE THRIFT have to say, theoretically, denied THE FALKNERS' as laymen, access to the courts and freedom of speech, and subjects them to virtual servitude.

THRIFT, as mortgagor/third party beneficiary named therein, after accepting over $35,000.00 from THE FALKNERS' for 12-1/2 years, through May, 1981, claimed it invalid and fraudulently forclosed on THE FALKNERS' property, when they were not in default and without SYBLE FALKNER as a party, against a stranger and creditors who had no interest in the property, in total disregard and in interference with THE FALKNERS' known liberty, due process and property rights (AmeriFirst Fed. S & L Assoc. v Wasserman, Fla. 11th Jud. Circuit, Case No. 81-1614-CA-16), and in total violation and contempt of USDJ Roetiger's February 13, 1975 Order of Dismissal in THE FALKNERS' Quiet Title Action (Falkner v. U.S., Etc. No. 74-1261-CIV-NCR), that determined that the 69-17214 specific performance case "had exclusive jurisdiction" to determine finally as between all the parties and the world, all conflicting claims to the property in question (1).

THE FALKNERS' commenced a state court restitution action against THE THRIFT (Falkner v AmeriFirst Fed. S & L Assoc, Fla. 11th Jud. Circuit, Case No. 83-8117 (CA-28) recommended by THE LAWYERS and the Federal Court's April 27, 1982 dismissal order (Falkner v AmeriFirst Fed. S & L Assoc, USDC-So-FL, No. 82-0113-CIV-SMA-CA) and affirmed on that basis on February 22, 1983 (701 F.2d 188) wherein they timely attacked THE THRIFTS' said foreclosure judgment dated September 3, 1981, against THE FALKNERS' property as "void" based on lack of jurisdiction and fraud and unconstitutional acts of the defendants' in its attainment where they made it appear that the foreclosure action had jurisdiction of the property and the parties when in reality they knew very well that

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(1) This Court declined to consider the federal issues of estoppel raised by THE FALKNERs' in the '69 Specific Performance case (Falkner v Pastrano, No. 71-1478, 93 Sup Ct 459, 409 U.S. 1020, 24 L.Ed.2d 312).

that court had no jurisdiction and that it was vested "exclusively" in the '69 case, in which THE THRIFT was a party, represented by THE LAWYERS, in both cases.

THE THRIFT with THE LAWYERS, in collusion with state court judges and clerk's of that court, under color of state law, and with illegal intent and motive to obstruct justice and deny THE FALKNERS' their known liberty, due process and property rights, and in willful contempt of Judge Roetiger's 2-13-75 order, manipulated and ignored relevant state law and stalled the required jury trial for six (6) years by entering several erroneous orders in the trial and appellate court (467 So.2d 746, Fla 3d DCA-4-2-85 and 489 So.2d 758, Fla 3d DCA 4-1-86), and wilfully stiffled and suppressed evidence presented to it that proved the foreclosure proceedings and judgment "void" on its face and that THE FALKNERS' were entitled to summary judgment in their favor

as a matter of right and law, resulting in state court judge Fuller's order granting THE THRIFT summary judgment on April 22, 1988, as a trespasser, without sufficient notice, that changed the facts and invaded the province of a jury, and relied on the "void" foreclosure judgment, known by it to be "void" as a valid defense and sustained the fraud of THE THRIFT and THE LAWYERS.

When the state appellate court refused to enforce its order directing the clerk below to correct the record and directed THE FALKNERS' to file their brief on a false and incorrect record known by them to be false and untrue, and as the circumstances made THE FALKNERS' appeal ineffective or a less effective remedy than that sought in this instant suit, on March 14, 1989, THE FALKNERS' voluntarily dismissed the appeal from the Order Granting THE THRIFT summary judgment, which the Appellate Court recognized and affirmed by its

order of dismissal dated March 28, 1989, and collaterally attacked the restitution proceedings and judgment in this instant civil rights case on October 12, 1989.

The court of appeals, as the district court below, refused to take the allegations of THE FALKNERS' pro se complaint as "true" or to construe the complaint liberally in favor of THE FALKNERS' and actually left the record to arrive at its erroneous AFFIRMANCE that was based upon a false fact that "The Falkners' claim that the defendants, along with state officials acting under color of state law, conspired through judicial foreclosure proceedings to take their property away in violation of the Fifth, Seventh, and Fourteenth Amendments," and ignores its mandatory duty to determine the motion to dismiss upon the facts set out in the complaint that the conspiracy was through judicial restitutions proceedings and judgment, and to treat it as a motion for summary judgment when it left

the complaint facts, and its sufficiency was challenged by THE FALKNERS' Rule 11, 12(f) and 56 motions.

The fact that the court of appeals refuses to "print" its non-published opinions and affirmances without opinion under 11th Cir. R. 36-1 in this case, as required, and that it has deemed portions of its progress docket sheets SECRET to THE FALKNERS, and has ignored the record and record excerpts and heard the cause "on the transcript of record," (Appendix B, infra, pp. 46), compounded by the fact that the courts below refused to correct the original record on appeal and to cause that portion of the dismissal order appealed that DENIED THE FALKNERS' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11, as MOOT,"to have adequate notation in the civil docket" and entered pursuant to Rule 79(a), Fed.R.Civ.P., as mandated, denied THE FALKNERS' their

fundamental rights to test the legal sufficiency of the defense of THE THRIFT and THE LAWYERS and to be heard on every question raised involving their rights and interests and acts to obstruct justice and denies THE FALKNERS' their guaranteed rights to due process and appeal thereon.

The record and record excerpts reflect that the defense of THE THRIFT and THE LAWYERS is in fact a "sham" "Answer" that lacks sufficient evidentiary support for their factual contentions to raise a boni fide issue; the case is at issue; and THE FALKNERS' are entitled to due process and summary judgment in their favor, pursuant to Rules 8(a)(f), 12(f), 11, and 56, Fed.R.Civ.P., and the U.S. Constitution.

The courts below, in considering only what THE LAWYERS, who represent themselves, and THE THRIFT have to say, theoretically, denied THE FALKNERS' as laymen, access to the courts and freedom of speech, and subjects them to virtual servitude.

imposed against them. The purpose of THE FALKNERS' motion to strike the sham defense interposed by THE THRIFT and THE LAWYERS was to test its legal sufficiency which on its face is actually alleged and is prejudicial and is not valid, based on their unclean hands, their fraud, illegal and unconstitutional acts against THE FALKNERS' in the restitution case that prevented them from fully exhibiting and trying their case and there has never been a real contest before any court of the subject matter that denied them access to the court and hearing on the merits.

The motion to strike defendants' responsive pleading as sham is authorized by the provisions of Rule 11, that a pleading may be stricken as sham, as in the case at bar, when it is signed with the intent to violate the purpose of Rule 11, to keep out of a case issues which are known by the defendant LAWYERS filing the pleading to be false. Lau Ah Yew v Dulles, 236 F.2d 415, 23

F.R.Serv.11.51, Case 1 (9th Circuit 1956); American Auto Assoc. Inc. v Rothman, 104 F. Supp. 655, 17 F.R.Serv.11.41, Case 1 (EDNY 1952); Fed.R.Civ.P.11; Chapter 11, Sec. 11.05, Federal Civil Practice. A defense is insufficient and subject to striking, where it is not a valid defense. Hartford Accident & Indemnity Co. v Village of Milan, 179 F. Supp 84; Moore v Prudential Ins.Co. of America, 166 F Supp 215; United States v Stangland, 137 F Supp 539; Konstantino v Curtiss-Wright Corp, 52 F Supp 684. Further, Rule 12(f) provides for the striking of any insufficient defense, and thereunder it would seem that a denial, insufficient under Rule 8(b) could be stricken. The view has been taken that an answer, defense or denial that is sham and false may be stricken. Local 167 of International Brotherhood of Teamster's v United States, 291 US 293, 78 L.Ed. 804, 54 S Ct 396.

POINT 6.

This court has established that

federal courts' have power to give relief from state court judgments obtained by fraud, as in the case at bar, where the requirements for the exercise of its jurisdiction exist and circumstances for the exercise of its equity powers are present, as where the fraud is extrinsic or collateral to the issues involved in the state court restitution action. Wells F. & Co. v Taylor, 254 US 175, 65 L.Ed 205, 41 S Ct 93; Simon v Southern R. Co. 236 US 115, 59 L ed 492, 35 S Ct 255; Cooper v Newell, 173 US 555, 43 L ed 808, 19 S Ct 506; Robb v Vos, 155 US 13, 39 L ed 52, 15 S Ct 4; Marchall v Holmes, 141 US 589, 35 L ed 870 12 S Ct 62. Since the federal courts are vested with equity powers, See 32 Am Jur2d Fed.P & P Sec 20, the exercise of such powers by them is not curtailed merely by reason of the fact that the object on which the exercise of such powers is to become operative is a state court judgment. See 160 ALR 1349, 1350. In cases such as

this one, in which the federal courts have jurisdiction under the Constitution and the Federal Statures, they can grant relief against a judgment of a state court obtained by fraud, or on other equitable grounds, in any case in which relief would be granted by a United States Court. Lehman v Graham (CA5 Fla) 135 F 39. The invalidity of the judgment is traced to gross denial of due process which render the restitution judgments void. Goldforb v J.A. Cantor Assoc. Inc. (Fla.App) 123 So.2d 50 (1960). The state restitution law that provided a remedy was not available and could not be exausted for unconstitutional acts and reasons beyond THE FALKNERS' control and this instant case was instigated to prevent by a decree operative against THE THRIFT, the enforcement of its state court summary judgment therein.

POINT 7.

The state court in collusion with THE THRIFT and THE LAWYERS, misused its

power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law in that restitution case attacked in this instant case, that utilized the September, 1981 foreclosure judgment, "void" on its face, and known by them to be "void,: to sustain its summary judgment in favor of THE THRIFT, and the courts below left the four corners of THE FALKNERS' complaint herein to follow suit, when everyone knows it is not a valid defense.

The foreclosure judgment utilized to sustain the state court restitution judgment and the dismissal order in this case at bar, is "void" on its face and is not entitled to any respect or consequences of a valid adjudication, and should be entirely disregarded and declared inoperative herein in which its effect is sought to be given it. It cannot affect, impair, or create rights, Pennoyer v Neff, 95 US 714, 24 L ed 565, nor can any rights be

based thereon. It was not necessary for THE FALKNERS to take any steps to have the "void" foreclosure judgment reversed or vacated, it was open to attack or impeachment in the restitution action and in the instant civil rights case, as a matter of right and sound discretion. The foreclosure judgment against THE FALKNERS' property is not entitled to enforcement and is not protection to THE THRIFT or THE LAWYERS who seek to enforce it. THE THRIFT accepted and retained the fruits of the January 13, 1969 specific performance judgment in favor of THE FALKNERS' and are estopped from denying its validity. Compton v Jesup, 167 US 1, 42 L ed 55, 17 S Ct 795. Under this rule, it has been held that one who accepts the benefits of a judgment should be precluded from questing the validity of the burden imposed by an express condition on which the judgment was granted, which principles are peculiarly applicable in this case at bar where the attack is made in a collateral

proceeding, where the invalidity is alleged to result from an absence of jurisdiction and fraud. Whatever, the mere failure of THE FALKNERS' to act with respect to the "void" foreclosure judgment, does not estop them from asserting their rights to property purportedly affected thereby, and must be considered an insufficient defense in the case at bar.

POINT 8.

THE FALKNERS submitted their differentces as to whether the record truly disclosed what occured in the district court but the district judge refused to make the record conform to the truth to correct the misstated parties in the case, and the omission of the entire substance of the order of dismissal appealed that DENIED as "moot" THE FALKNERS' motion to strike sham defense; and for summary judgment; and for related relief under rule 11, and to show the joint verified complaint with "exhibits A thru M, and that "jury" trial was demanded, among other things

material to THE FALKNERS, which the Court of Appeals should have directed to be corrected in the record when requested, to prevent the limited and prejudicial appellate review and the May 10, 1991 judgment and opinion of AFFIRMANCE herein. By its refusal to correct the factual record, the Court of Appeals was able to indulge itself in considering only the allegations contained in THE THRIFT and THE LAWYERS' joint motion to dismiss under Rule 12(b)(6) and its answer brief, that changed the well pleaded material allegation of THE FALKNERS' complaint, changed the parties, facts, issues and law of the case presented by THE FALKNERS, that resulted in the May 10, 1991 AFFIRMANCE of the February 27, 1989 Order of Dismissal, that gives an incorrect discription of the facts, issues and relevant rule of law and further changed two (2) defendants named by the FALKNERS' (one THRIFT and one LAWYERS, each with aliases) to four (4) defendants, and

eliminated defendants/appellees Blackwell, Walker, Fascell & Hoehl, Esqs., p/k/a, Blackwell, Walker, Gray, Powers, Flick & Hoehl, Esq. (THE LAWYERS), from the action and further deleted "his wife," from the caption after THE FALKNERS' names, that a true and factual record would have prevented.

it is ordinarily the duty of the party seeking review to see that the record is properly presented to the appellate court, that it is sufficient to show the alleged errors, as held by the Supreme Court in Redfield v Parks, 130 U.S. 623,32 L ed 1053, 9 S Ct 642, which THE FALKNERS attempted in the district court and court of appeals, and all matters necessary for a consideration of the questions presented for review, and where error appears, the appellate court should not preclude itself from correcting it. Dunlap v Northeastern R Co 130 US 649, 32 L ed 1058, 9 S Ct 647. Doubtful recitals in the record it has been

held will be construed most strongly against the exceptor.

Rule 79(a), Fed.R.Civ.P., mandates that the docket entry No 21 of the order of dismissal appealed, further show the "substance of the said order that in addition denied THE FALKNERS' Motion To Strike Sham Defense; And For Summary Judgment; And For Related Relief Under Rule 11, as "moot," in order for it to be effective. Only when the substance of said order is so entered does appeal time begin to run and without its adequate notation in the civil docket, under Rule 58, the judgment is not effective and the time for appeal has not commenced to run, which is greatly prejudicial to THE FALKNERS' rights and remedies in this case. The view has been taken by this court in Local 167 of International Brotherhood of Teamsters v United States, 291 US 293, 78 L ed 804, 54 S Ct 396, that an answer, defense or denial that is sham and false may be

stricken, and thus a proper point that must be determined if the truth is relevant.

CONCLUSION

For the reasons set forth above, and in the interest of substantial justice, petitioners pro se, ARTHUR FALKNER and SYBLE FALKNER, his wife, respectfully request that a writ of certiorari be granted in all respects to review the judgment and opinion of AFFIRM-ANCE dated May 10, 1991 of the United States Court of Appeals for the Eleventh Circuit.

RESPECTFULLY SUBMITTED,

Syble Falkner

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Arthur Falkner

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DATED: SEPTEMBER 30, 1991.
Express Mail Next Day Service # FB134697662US

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-5302

Non-Argument Calendar

D.C.Docket No. 89-2292-CIV-JWK

ARTHUR FALKNER, SYBLE FALKNER

DO NOT PUBLISH

Plaintiffs-Appellants,

verses

AMERIFIRST BANK, a Federal Savings Bank a/k/a AMERIFIRST BANK, A Florida Savings Bank, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

(May 10, 1991)

Before KRAVITCH, JOHNSON and DUBINA, C.J.

PER CURIAM:

Arthur and Syble Falkner, husband and wife, filed this civil action under Sections 1983, 1985 and 1986, naming as defendants Amerifirst Bank, Amerifirst Federal Savings and Loan, First Federal Savings and Loan, and the law firm of Blackwell and Walker. The Falkners claim

APPENDIX A

that the defendants, along with state officials acting under color of state law, conspired through judicial foreclosure proceedings to take their property away in violation of the Fifth, Seventh and Fourteenth Amendments. The district court dismissed the complaint for failure to state a claim upon which relief could be granted and for being barred under the principles of res judicata and collateral estoppel. This appeal is from the order of dismissal.

The record in this case reflects that the complaint was properly dismissed by the district court. 1 We AFFIRM.

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1 The motion of the Resolution Trust Corporation to be substituted as appellee for defendant Amerifirst Bank is GRANTED.

All outstanding motions filed by appellants in this cause, including "Appellants' Emergency Motion for Reconsideration, Vacation, and Review by the Court of the July 26, 1990 order of Honorable R. Lanier Anderson, Judge", "Appellants' Motion for Reconsideration, Vacation and Review by the Court of the August 14, 1990 Order of Honorable Peter T.Faye [sic] Judge" and "Appellant's Supplemental Emergency Motion for Reconsideration,

Vacation and Review by the Court of the July 26, 1990 order of Honorable R. Lanier Anderson, Judge & the August 14, 1990 or of Honorable Peter T. Faye[sic], Judge." are DENIED.

Further, we direct that the clerk file on the docket of this case correspondence from appellants dated March 15, 1991, to Circuit Executive Norman Zoller (and by him forwarded to the clerk) as though this correspondence was a motion that the clerk be ordered to disclose to the parties the complete contents of page 2 of the docket sheet in this cause and that the clerk be directed to amend the docket in this cause with regard to the location and contents of the record on appeal in this cause. This motion is, likewise, DENIED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-5302 Non-Argument Calendar

D.C. Docket No. 89-2292-Civ-JWK

ARTHUR FALKNER,
SYBLE FALKNER,

versus Plaintiffs-Appellants,

AMERIFIRST BANK, a Federal Savings Bank a/k/a AMERIFIRST BANK, A Florida Savings Bank, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Before KRAVITCH, JOHNSON and DUBINA, Circuit Judges

JUDGMENT ISSUED AS MANDATE JULY 31,1991

This cause came to be heard on the transcript of the record from the U.S. District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be and the same is hereby AFFIRMED:

IT IS FURTHER ORDERED THAT Plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

ENTERED: May 10, 1991 For the Court

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-5302

ARTHUR FALKNER,
SYBLE FALKNER,

FILED JUL 3, 1991
USCA-11

versus Plaintiffs-Appellants,

RESOLUTION TRUST CORPORATION, as receiver for AMERIFIRST BANK, a Federal Savings Bank, a/k/a AMERIFIRST BANK, a Florida Savings Bank, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITIONS FOR REHEARING AND SUGGESTIONS OF REHEARING EN BANC

(Opinion___, 11th Circ., 19__, __F.2d__).

Before: KRAVITCH, JOHNSON and DUBINA, Circuit Judges. PER CURIAM:

The Petitions for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Fed. R.App.P: Eleventh Circuit Rule 35-5), the Suggestions of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/S/ BRANDON JOHNSON
UNITED STATES CIRCUIT JUDGE

ORD-42
(9/90)

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 89-2292-CIV-KEHOE

ARTHUR FALKNER, et ux.,

Plaintiffs,

vs.

AMERIFIRST BANK, etc., et al,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(6)

FILED FEB 27, 1990-DC

THIS CAUSE is before the Court upon the motion of the Defendants, pursuant to Federal Rules of Civil Procedure 11 and 12(b)(6), to dismiss or strike the Complaint herein.

After a review of the motion, it is ORDERED and ADJUDGED that the motion to dismiss is GRANTED. See Southern Jam. Inc. v Robinson, 675 F. 2d 94 (5th Cir. 1982). See also Van Sickle v Holloway, 791 F.2d 1431 (10th Cir. 1986). Earnest v Lowentritt, 690 F.2d 1198 (5th Cir. 1982). 1

Dated Feb 27, 1990

/S/ JAMES W. KEHOE
U.S. DISTRICT JUDGE

1 In view of the Court's ruling

APPENDIX D

herein, the Plaintiffs' Motion to Strike Sham Defense and for Summary Judgment, Etc., is denied as MOOT.

APPENDIX D

IN THE UNITED STATES COURT OF

APPEALS FOR THE ELEVENTH CIRCUIT

No. 90-5184

IN RE: ARTHUR FALKNER and SYBLE FALKNER,

FILED
MAR 9, 1990
USCA-11

Petitioners.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida

Before: ANDERSON, CLARK and EDMONDSON
Circuit Judges

BY THE COURT:

The Petition for Writ of Mandamus is DISMISSED as moot in light of the district court's ruling of February 27, 1990, dismissing plaintiffs' complaint. See note 1 of the district court's order.

IN THE UNITED STATES COURT OF

APPEALS FOR THE ELEVENTH CIRCUIT

No. 90-5184

IN RE: ARTHUR FALKNER and SYBLE FALKNER,

FILED
JUN 13, 1990
USCA-11

Petitioners.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida

Before: ANDERSON, CLARK and EDMONDSON, Circuit Judges

BY THE COURT:

The Motion to Compel Docketing of the Petition for Rehearing and for a Ruling by the Court is GRANTED. The Motion to Stay Issuance of Mandate is DENIED. The Motion to Stay Appeal No. 90-5302 is DENIED.

IN THE UNITED STATES COURT OF

APPEALS FOR THE ELEVENTH CIRCUIT

No. 5302

ARTHUR FALKNER and SYBLE FALKNER,

FILED JUN 13, 1990
USCA-11

versus Plaintiffs-Appellants,

AMERIFIRST BANK, a Federal Savings Bank, a/k/a AMERIFIRST BANK, a Florida Savings Bank, BLACKWELL, WALKER, FASCELL & HOEHL, ESQS., a/k/a BLACKWELL, WALKER, GRAY, POWERS, FLICK & HOEHL,

Defendants-Appellees,

AMERIFIRST FEDERAL SAVINGS & LOAN ASSOCIATION, ETC., ET AL,

Defendants.

On Appeal from the United States Court for the Southern District of Florida

ORDER:

Appellants' motion to supplement and correct record is DENIED without prejudice to renewal in the district court pursuant to Fed.R.App.P. 10(e).

Appellants' motion to stay appeal pending application for writ of certiorari to the Supreme Court in In re: Falkner, No. 90-5184, is DENIED. (cont)

APPENDIX G

That portion of appellants' emergency motion to compel clerk to obey the rules on or before May 17, 1990" requesting access to the record is GRANTED. The clerk of this Court is DIRECTED to return the record on appeal to the clerk of the district court clerk, in the preparation of their briefs. Appellants' brief will be due in 30 days from the date of this order.

The remaining requests contained in appellants' "emergency motion to compel clerk to obey the rules on or before May 17, 1990" are DENIED as moot in light of the prior rulings contained in this order.

/S/ PAUL H. RONEY
U.S. CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-5302

ARTHUR FALKNER,

FILED JUL 26, 1990, USCA-11

Plaintiffs-Appellants,

versus

AMERIFIRST BANK, a Federal Savings Bank, a/k/a AMERIFIRST BANK, a Florida Savings Bank, and BLACKWELL, WALKER, FASCELL & HOEHL, ESQS., a/k/a BLACKWELL, WALKER, GRAY, POWERS, FLICK & HOEHL, ESQS.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ORDER:

Appellants' motion for reconsideration, vacation and review by the court of the June 13, 1990 order of Honorable Paul H. Roney, specifically requestion that the caption of the case be corrected is DENIED because the caption is consistent, pursuant to Fed.R.App.P. 12, with the title given to the action in the district court; requesting that the portion of the order denying appellants'

motion to supplement and correct the record without prejudice to renewal in the district court pursuant to Fed.R. App.P. 10(e) be vacated is DENIED because both the corrections and supplementation should be "submitted to and settled by the district court" pursuant to Rule 10 (e); requesting access to the record for the preparation of their reply brief is GRANTED and the clerk of this Court is DIRECTED to forward the record to the clerk of the district court for appellants' use, within the office of the district court clerk, inthe preparation of their reply brief. Appellants' reply brief is due 14 days from the date of this order; requesting that the clerk of this court file appellants' brief on June 4, 1990, is DENIED as moot. Consistent with Fed.R.App.P. 25(a), the brief was deemed filed on the day of mailing, June 4, 1990. /S/ R. LANIER ANDERSON
U.S. CIRCUIT JUDGE

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 90-5302

ARTHUR FALKNER,

Plaintiffs-Appellants,

FILED AUG 14, 1990
USCA-11

versus

AMERIFIRST BANK, a Federal Savings Bank, and BLACKWELL, WALKER, FASCELL & HOEHL, ESQS., a/k/a BLACKWELL, WALKER, GRAY, POWERS, FLICK & HOEHL, ESQS.,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

ORDER:

Appellants' motion to strike the answer brief of the appellees is DENIED.

Appellants' "emergency motion for reconsideration, vacation and review by the court of the July 26, 1990 order of Honorable R. Lanier Anderson, Judge", denying their motion to vacate the June 13, 1990 order, is DENIED. Appellants' reply brief will be due 14 days from the date of this order.

/S/ PETER T. FAY
U.S. CIRCUIT JUDGE

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 89-2292-CIV-KEHOE

ARTHUR FALKNER, et ux,

Plaintiffs, FILED AUG 22, 1990

vs.

AMERIFIRST BANK, etc., et al,

Defendants.

ORDER DENYING MOTION TO COMPEL CLERK TO COMPLY WITH FEDERAL RULE OF APPELLATE PROCEDURE 11

THIS CAUSE is before the Court upon the verified motion 1 of the Plaintiffs for an order compelling the Clerk to obey Fed.R.App.P. 11(a) and (b), concerning certain changes requested by the movants to be made to various entries on the Docket Sheet in this case.

After a review of the motion, it is ORDERED AND ADJUDGED that the motion is DENIED. 2 DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of Aug. 1990. /S/ JAMES W. KEHOE
U.S. DISTIRCT JUDGE

1 Although, by handwritten notation, the

movants have addeded an "emergency" designation to the title of this motion, nothing in the text of the motion itself indicates any "emergency."

2 The movants have attached to their motion, as Exhibit 3, Page 61, their letter to the Clerk of this Court, dated April 9, 1990, in which they originally requested the subject changes to the Docket Sheet in this case. The Court specifically notes that the majority of the requested changes are clerical in nature, and that none of the requested changes is needed to prevent prejudice to any party. The letter is, however, part of the Court's official file, and the interests of the movants should, therefore, be fully protected if, at any time, an entry on the Docket Sheet becomes an issue in the movants' appeal.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

Mr Arthur Falkner

Re: Arthur Falkner, et ux. v United States District Court for the Southern District of Florida No. 90-475

Dear Mr. Falkner: November 5, 1990

The Court today entered the following order in the above entitled case: The petition for a writ of certiorari is denied. /S/ JOSEPH F. SPANIOL, JR., CLERK

(111 Supreme Ct. Reporter 388).

January 7, 1991

(Captioned as above)

The petition for rehearing is denied.

/S/ JOSEPH F. SPANIOL, JR., CLERK

(111 Supreme Ct Reporter 716)

APPENDIX K

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-5302

ARTHUR FALKNER, SYBLE FALKNER, FILED MAY 10, 1991 USCA-11

versus Plaintiffs-Appellants,

AMERIFIRST BANK, a Federal Savings Bank a/k/a AmeriFirst Bank a Florida Savings Bank, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Before KRAVITCH, JOHNSON and DUBINA, Circuit Judges.

BY THE COURT:

Appellants' motion and supplemental emergency motion for reconsideration, vacation and review of this Court's August 14, 1990 order, which denied appellants' motion to strike appellees' answer brief and reconsideration of this Court's June 13, 1990 order, are denied.

APPENDIX L